

TOXOCITY PROGRAM REVIEW
STAKEHOLDER'S GROUP MEETING #5
December 11, 2001

PRESENT: Bill Ball, Jay Beaudoin, Sean Mahoney, Bill Taylor, Nick Bennett, Bill Zarlonsky, Darold Wooley, Steve Silva, Jennie Bridge, Bill Alsop, Marvin Cling, Bob Deabay, Gregg Wood, Barry Mower, David Miller, Dennis Merrill

1. To follow up on issues from the last meeting, the DEP is beginning the process for rule making for biocriteria rules. A draft rule is currently being circulated internally. A stakeholder group will be solicited in the next month or two, and two or three meetings are anticipated. The intent is to have the rule go to public hearing in the spring. A plan to address sediment deposition questions is not yet done.
2. The sub-group on hardness met on November 29, and included Bill Ball, Bill Taylor, Nick Bennett, Jay Beaudoin, Bill Alsop, Barry Mower, David VanWie, Dennis Merrill, Tim Andrews (Domtar) and John Clark and Tim Peters (Houlton Water Co.). There was a good discussion of the issue. DEP remains committed to measuring hardness above significant discharges in a watershed. Defining exactly where to make such measurements and what sources to include/exclude remains open for discussions.
3. In response to a question, EPA noted that in the event a decision on NPDES delegation were to retain EPA jurisdiction for Indian Country, the Agency would probably use water quality standards similar to those being proposed by DEP as state wide standards. However, EPA could use other standards. Any proposed permit would be sent to the State for review and comment before it would be issued.
4. For section A.3 of the new, proposed Chapter 530, there was a discussion of the degree to which a facility would be expected to describe toxic components of its effluent in permit applications. It is not practical to identify every chemical in an industry or community. Most would be in minor amounts and/or would be known to be part of a particular manufacturing process. There is general language in the NPDES program rule providing protection to facilities for the discharge of substances in concentrations identified in their application. This is commonly referred to as "permit as a shield" language. The language in the draft rule is quite broad, and DEP will make changes in consideration of the federal rules. The intent is focus on substances that may be used or present in toxic amounts.
5. DEP distributed a memo from the Board of Pesticide Control listing 12 compounds used in the State that could run off into municipal sewers. This was offered as an example of what might be considered to supplement the existing list of priority pollutants as referred to in section B.3 of Chapter 530. This list is not a proposal, but only an example. Before any testing would be required, DEP would consider for each compound if there are applicable water quality criteria, if testing is commercially available and what the fate and transport for the compound may be. One source of information to supplement our water quality standards is work done by Canada.

6. In sections B.3(a) and 3(b) DEP noted that language allowing the Department to add other WET test organisms is included to cover the event that EPA might introduce a better test organism in the future. At this time there is no intent to change organisms. It was noted that if test organisms are to be changed for a facility a permit modification should be initiated.
7. There was considerable discussion how the breakpoints for testing levels in section B.2 are set. The proposed points are at dilution factors of 20, 100 and 500 to one. It may be appropriate to increase the cut-off for the Level I group to 40 to one, since facilities between 20 and 40 have a fairly high probability for exceedences. DEP will more carefully review the occurrence of exceedences for facilities in different dilution factor ranges to see if the lines should be redrawn.
8. In discussion of section B.4, concern was expressed that only a very little amount of testing is being required. With reduced testing provisions, some facilities might do only one test every five years. This would be too little to characterize the effluent detect changes. It was noted that the reasonable potential calculations do help to mitigate the low number of tests. EPA noted that the number of tests required is not vastly different from programs in other states. Maine does do more with chronic WET testing than some states. DEP will reconsider the waivers to see if those reductions may be too much, especially for facilities with dilution factors of under 100 to one.
9. In section C.1, the requirement that test results be submitted within days after receipt was generally satisfactory. This is the same language as in the mercury rule. There was a discussion on how extra tests done as part of a TRE would be handled for compliance or enforcement purposes. It was suggested that these tests not be subject to enforcement action. DEP will explore the legal consequences of this, but has a concern that if a TRE is not successful or diligently pursued, tests conducted along the way do create a compliance record to be used in deciding what actions may subsequently needed. In many cases, WET tests done as part of TRE investigations are not standard tests and not creditable for compliance reporting anyway. Doing a TRE does not remove the need for routine compliance testing required by the rule.
10. There was a long discussion of reporting for exceedences under section C.3. There was some concern that facilities may not be able to identify exceedences in every case. A combination of various water quality standards, dilution factors and multiple pollutants must be considered in evaluating test results. The laboratories can assist by providing a preliminary evaluation, but do not want to make final compliance determinations, as that is DEP's responsibility. The time for submitting a TRE proposal was also debated, with several suggesting that 30 days (as in the current rule) are not enough time to complete a full plan. Forty-five days may be more reasonable. DEP will revise the language in this area.
11. There was a concern with procedures outlined in the second paragraph of C.3 that would allow DEP to not include license limits in response to exceedences under certain

conditions. Effluent limits should always be included to assure that compliance is maintained. Others noted that some problems are discrete and once resolved will not recur, making the need for effluent limits moot. The DEP's past history in not including effluent limits where needed is a continuing concern.

12. Under section C.4, most thought that the language in (a) regarding effluent concentrations was an improvement. To address question about flow augmentation, DEP will add language that water quality criteria will not be exceeded. After a discussion of allowing for tiered effluent limits in (c), the consensus was that the approach is not worthwhile and should be dropped.
13. Under section C.6, the group discussed statistical methods for evaluating WET test results. Some people will work with DEP to review the most appropriate methods and draft language to be included as a possible new paragraph in this section.
14. It was noted that the formula in section D.1.a.ii might be incorrect. DEP will review and correct as necessary.